



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2011

Ms. Nneka C. Egbuniwe  
Deputy General Counsel  
Parkland Health & Hospital System  
5201 Harry Hines Boulevard  
Dallas, TX 75235

OR2011 - 04109

Dear Ms. Egbuniwe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412165.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received five requests from the same requestor for information related to activities in interacting with, writing comments on, and placing votes on all public news media and internet blog websites.<sup>1</sup> You state Parkland does not have information responsive to the majority of the requests.<sup>2</sup> You further state Parkland will release some of the responsive information to the requestor. You claim the submitted information is excepted from

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<sup>1</sup>You inform this office that the requestor modified one of his requests. Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, we note the submitted information includes computer usernames and passwords. The Act is applicable to "public information," which section 552.002 of the Government Code defines as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body." Gov't Code § 552.002(a)(1). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the information at issue, we determine the computer usernames and passwords we have marked do not constitute public information under section 552.002 of the Government Code. Accordingly, the computer usernames and passwords are not subject to the Act and Parkland is not required to release this information in response to this request.<sup>5</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client

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<sup>3</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002). We note that, in this instance, the proper exceptions to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107. *See id.*; Open Records Decision No. 677 (2002).

<sup>4</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>5</sup>As our ruling is dispositive, we do not address your argument to withhold this information under the Act.

privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)–(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you have marked was communicated between Parkland employees, attorneys for Parkland, and a third party consultant Parkland hired to advise on public relations issues for the purpose of facilitating the rendition of legal services. Further, you state this information was intended to be and has remained confidential. Therefore, based on your representations and our review of the documents, we conclude the information you have marked falls within the protections of the attorney-client privilege and may generally be withheld under section 552.107 of the Government Code.<sup>6</sup> We note that one of the e-mails strings you have marked under section 552.107 includes a communication with a non-privileged party. If this communication, which we have marked, exists separate and apart from the e-mail string in which it appears, then Parkland may not withhold the communication with the non-privileged party under section 552.107(1) of the Government Code.

In summary, the computer usernames and passwords we have marked are not subject to the Act and Parkland is not required to release this information in response to this request. Parkland may withhold the information you have marked under section 552.107 of the Government Code. However, if the e-mail we have marked exists separate and apart from the submitted e-mail string, it must be released along with the remaining information.

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<sup>6</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 412165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)